

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JABARI BARRY,

Petitioner,

v.

JEORLD BRAGGS JR.,

Respondent.

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Case No. CIV-19-587-SLP

**ORDER**

Petitioner Jabari Barry, a state prisoner, filed a Petition for Writ of Habeas Corpus [Doc. No. 1] pursuant to 28 U.S.C. § 2254. Respondent filed a Motion to Dismiss for Failure to Exhaust State Court Remedies [Doc. Nos. 7-8] and Petitioner filed a response. *See* Resp., Doc. No. 10. Before the Court is the Report and Recommendation [Doc. No. 11] (“R. & R.”) issued by U.S. Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1). Judge Purcell recommends that either (i) Petitioner be allowed to amend his Petition [Doc. No. 1] to allege only unexhausted arguments (if he chooses to do so) or (ii) Petitioner’s Petition [Doc. No. 1] be dismissed without prejudice to allow him to exhaust his unexhausted arguments in state court. Petitioner filed an Objection [Doc. No. 12] wherein he does not truly object to Judge Purcell’s R. & R., instead only indicating his choice between the two options recommended by Judge Purcell—Petitioner seeks to file an amended petition. *See* Obj. 1-2, Doc. No. 12.


Both for the reasons stated by Judge Purcell in his R. & R. and due to Petitioner’s failure to lodge any objections to Judge Purcell’s recommendations, the Court concurs with

and adopts the analysis set forth in the R. & R. Petitioner asks for permission to amend his petition to assert only unexhausted arguments, which he will be allowed to do.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 11] is ADOPTED.

IT IS FURTHER ORDERED that Petitioner is granted leave to file an amended petition pursuant to the procedure included in Local Civil Rule 15.1.

IT IS SO ORDERED this 30<sup>th</sup> day of March, 2020.

  
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SCOTT L. PALK  
UNITED STATES DISTRICT JUDGE